

VOLUME 2. AIR OPERATOR CERTIFICATION

CHAPTER 4. FOREIGN AIR CARRIERS OPERATING TO THE U.S. AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE OUTSIDE THE U.S.

SECTION 1. BACKGROUND AND FAA AUTHORITY

255. THE CHICAGO CONVENTION AND ICAO. In 1944, representatives of 52 countries met in Chicago and together created a framework for international cooperation to develop civil aviation in a safe and orderly manner. They signed the Chicago Convention which created the International Civil Aviation Organization (ICAO), now permanently headquartered in Montreal. Today, the United States and more than 150 other nations participate in ICAO to coordinate procedures and standards and to disseminate technical and economic information.

257. ARTICLES OF THE CONVENTION. The 96 Articles of the Convention establish the privileges and obligations of member countries, provide for recommendations to contracting member States on installation of air navigation facilities, provide for adoption of international standards and recommended practices which affect all aspects of air navigation, and support facilitation of air transportation by working to reduce customs, immigration, and other inspection formalities. Articles 50 through 55 of the Convention establish the Council which is a full-time group of representatives elected from the contracting member States. The Council is the executive body of ICAO.

259. INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES. International Standards and Recommended Practices are adopted by the Council in accordance with Articles 37, 54, and 90 of the Convention and are located in Annexes to the Convention. Annex 6 covers Operation of Aircraft. Part I deals with International Commercial Air Transport and Part II with International General Aviation. Application by the Contracting Member States of the standards presented in the Annexes is considered necessary for safety. The application of recommended practices is considered highly desirable for safety. The standards set forth in the Annexes are similar to United States Federal Aviation Regulations. A member State may adopt different standards but if it does so, it has an obligation to notify ICAO of any differences. ICAO standards represent minimum international standards and do not replace national regulations.

261. DEFINITIONS.

- “Dry Lease” (for this chapter only) means any agreement in which a lessor leases a U.S.-registered aircraft without crew to a lessee and in which the lessee maintains operational control.
- “Lessor” (for this chapter only) means a U.S. air carrier, bank, or leasing company.
- “Lessee” (for this chapter only) means a foreign air carrier operating into and out of the United States or a foreign person engaged in common carriage solely outside the United States.
- “Foreign Air Carrier” means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.
- “Foreign Air Taxi” (for this chapter only) means any person, not a citizen of the United States, who is authorized by its State and the United States government to operate small aircraft only in nonscheduled foreign air transportation.
- “Foreign Air Transportation” means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.
- “Interchange Agreement” means any agreement in which the operational control of an aircraft is transferred for short periods of time from one air carrier to another air carrier and in which the latter air carrier assumes responsibility for the operation of the aircraft at the time of transfer.
- “Small Aircraft” (for this chapter only) means any aircraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less.

263. DOT'S AUTHORITY AND ROLE.

A. The Department of Transportation regulates some economic aspects of foreign air carriers. Before any foreign air carrier or foreign operator may conduct any passenger or cargo operations to and from the United States, it must obtain economic authority (either a permit under Section 402 of the FA Act, or an exemption under Section 416(b)) from the DOT.

B. Applicants for Section 402 permits, including renewal, amendment, or transfer of a permit, file an application required by 14 CFR Part 211 with DOT. Before any economic authority is issued, DOT must determine that the applicant is fit, willing, and able to perform such foreign air transportation and to conform to U.S. rules and regulations, and that such air transportation will be in the public interest. In granting economic authority to a foreign air carrier, DOT may impose certain terms, conditions, and limitations based on public interest considerations and bilateral agreements between the State of the foreign air carrier and the U.S. Government. The exercise of the privileges granted by DOT is subject to compliance with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

C. Canadian charter air taxi operators register for economic authority under 14 CFR part 294 of the DOT regulations to operate transborder services between Canada and the United States. Mexican charter air taxi operators file application for foreign air carrier permits under Section 211.10 of the DOT regulations. Foreign air taxis from Canada and Mexico register or file, respectively, with the Licensing Division (P-45) of the DOT's Office of Aviation Operations. Approval of foreign air taxis from Canada and Mexico to operate within the United States is subject to the bilateral agreements between the respective governments and compliance with all applicable laws of the United States.

265. FAA'S AUTHORITY AND ROLE. The FA Act contains the basic authority for promoting safety of flight of civil aircraft in air commerce and for regulating the global operations of U.S.-registered aircraft. The regulations prescribe minimum safety standards and reasonable rules and regulations to accomplish the agency's safety function. With respect to foreign operators, the predominant operating standards are found in Parts 91 and 129. In general, the FAA's authority to regulate foreign operators using foreign-registered aircraft is limited to assuring compliance with all the applicable operating rules, the ability to safely navigate and communicate within the U.S. National Airspace System, and protecting persons and property on the ground. In addition, if a foreign operator uses any U.S.-registered aircraft, other Parts apply (for example 21, 43, 61, 63, and 65).

FYI: Any U.S.-registered aircraft operated by a foreign air carrier is considered a foreign civil aircraft. The U.S. registration does not convey any additional authorization to the foreign air carrier beyond that granted in its operations specifications. The scope of the foreign air carrier's operations is limited to that granted in its DOT economic authority and reflected in its operations specifications issued by the FAA, regardless of the State of registry of its aircraft.

267. RELATIONSHIPS WITH FOREIGN NATIONALS. Inspectors should exercise particular tact and diplomacy during contact with representatives of various foreign government agencies they may deal with, as well as with representatives of foreign air carriers. Inspectors should provide any reasonable assistance requested but avoid giving the impression that the FAA is directing their activities. One of the best methods of accomplishing this is to explain what the FAA requires of U.S. flag air carriers and suggest that they may wish to consider similar methods of operation. Before scheduling any official visit to a foreign country, all required documentation such as passports, visas, and proof of onward or return ticketing should be arranged. If the visit is for the purpose of working with a foreign air carrier, coordination is first accomplished directly with the air carrier. After a date, time, and place are established, the appropriate office of the Civil Aviation Authority of the State of the foreign air carrier should be notified. The notification should inform the State Civil Aviation Authority of the purpose and other details of the planned visit, if appropriate. The notification should include an invitation for a representative of the Civil Aviation Authority to participate, if appropriate. The FAA's district office records on the foreign air carrier should contain the telephone and telex numbers, and mailing address of the State's Civil Aviation Authority. In some cases it may be necessary to request the aid of the State's Civil Aviation Authority in scheduling a meeting with the air carrier. In all cases when the visit will involve representatives of the State's Civil Aviation Authority the FAA's Office of International Aviation (AIA), FTS 267-3213 must be notified. AIA will, in turn, provide to the appropriate U.S. Embassy or Consulate the date, time, place, and nature of the FAA representative's visit.

269. COORDINATION AND COMMUNICATIONS. FAA inspectors should coordinate and communicate as often as necessary with representatives of each foreign air carrier and the State's Civil Aviation Authority. Normally, communications should be addressed directly to the foreign air carrier's representative in the United States. If an issue or problem cannot be resolved with the foreign air carrier's representative, the Flight Standards counterpart within the State's Civil Aviation Authority should be approached for assistance in resolving the problem. Finally, if the problem cannot be resolved at the working level through the State's

Civil Aviation Authority, the responsible inspector shall inform the Regional Flight Standards Division of the problem along with the details of attempts to resolve the problem. The Regional Flight Standards Division shall inform the Office of International Aviation (AIA), Washington headquarters of the problem, the steps taken to resolve the problem, and request direction and assistance. AIA will coordinate the FAA's actions with the Office of the Chief Counsel and the Department of State, as appropriate.

271. CONSUMER QUESTIONS. Public telephone complaints, inquiries, and comments regarding non-safety-related or service problems (such as flight cancellations, bumping, unfair and deceptive practices, smoking, lost baggage, and ticket refunds) shall be handled as outlined in the front pages (Roman numerals) of the FAA telephone directory.

272. - 276. RESERVED.

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